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5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
6 **OF THE STATE OF WASHINGTON**

7 IN RE THE ENFORCEMENT ACTION
8 AGAINST:

PDC CASE NO. 12-150

ORDER OF DISMISSAL

9 Move Bellevue Forward, Suzanne Baugh, and
10 John Su,

11 Respondents.
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13 This matter came before the Washington State Public Disclosure Commission on April
14 26, 2012 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington. Those
15 present included Barry Sehlin, Commission Chair; Jennifer Joly, Vice Chair; Jim Clements,
16 Member; and Amit Ranade, Member.

17 In attendance were: PDC Director of Compliance Phil Stutzman and PDC Compliance
18 Officer Kurt Young (representing PDC staff); PDC Executive Director Andrea McNamara
19 Doyle; Nancy Krier, General Counsel for the Commission; and PDC staff member Jana Greer
20 as recorder/reporter of the proceeding. No representatives of the Respondents were present or
21 participated. The proceeding was open to the public and was recorded.

22 This case concerns allegations in a 45-day citizen action letter that Move Bellevue
23 Forward (MBF) failed to timely register and report as a political committee with the Public
24 Disclosure Commission prior to September 27, 2011. This case also concerns allegations that
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1 Suzanne Baugh (MBF President) and John Su (MBF board member and contributor) concealed
2 the source of contributions received by MBF.

3 The Commission was provided with a Report of Investigation dated April 17, 2012
4 (and exhibits); and, an Executive Summary and PDC Staff Analysis. Mr. Stutzman and Mr.
5 Young made oral presentations to the Commission providing the staff recommendation for
6 dismissal of the allegations in the complaint.

7 The Commission hereby enters the following Findings of Fact, Conclusions of Law,
8 and Order.

9 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10 **Jurisdiction**

11 1. The Commission has jurisdiction to hear this matter as provided in RCW 42.17
12 and as recodified at RCW 42.17A (effective January 1, 2012).¹

13 **Findings of Fact**

14 2. On February 7, 2011, Move Bellevue Forward registered with the Washington
15 Secretary of State as a Washington non-profit corporation with its registered office in Seattle.
16 According to the organization's website, MBF is a self-described "*non-partisan, grassroots,*
17 *city-wide coalition of residents, businesses, non-profit organizations and community leaders*
18 *dedicated to a progressive long-term vision for Bellevue.*" MBF has been involved with the
19 light rail issue in Bellevue since its inception in February 2011, and has repeatedly lobbied the
20 Bellevue City Council and Sound Transit concerning a preferred light rail route that would run
21 along Bellevue Way.

22 3. Suzanne Baugh serves as the President of MBF.

23 4. John Su serves as one of nine directors of MBF.

24
25 ¹ The allegations in the complaints arose under RCW 42.17 as the law existed in 2011. Therefore, the
26 allegations were investigated under RCW 42.17, and the statutory references used in this Order are as those laws
existed in 2011. Effective January 1, 2012, RCW 42.17 was recodified to RCW 42.17A.

1 5. At its December 8, 2011 regular meeting, the commission acted to accept a
2 Stipulation as to Facts, Violations and Penalty in PDC Case No. 12-144, establishing that MBF
3 violated RCW 42.17.040, RCW 42.17.080 and RCW 42.17.090 by failing to timely register as
4 a political committee and by failing to timely file reports of contributions and expenditures
5 between September 27, 2011 and October 31, 2011. The Stipulation included a penalty of
6 \$1,000 with \$500 suspended on the condition that MBF is not found to have committed further
7 violations of RCW 42.17 within four years of the Commission's Final Order. The
8 Commission's Final Order was issued December 16, 2011.

9 6. In PDC Case No. 12-144, the Commission also acted to recommend that the
10 Attorney General take no further action on the allegations that MBF was operating as an
11 unregistered political committee (alleged violation of RCW 42.17.040, RCW 42.17.080 and
12 RCW 42.17.090), that MFP failed to provide complete sponsor identification on its political
13 advertising (alleged violation of RCW 42.17.510) and that MBF concealed the source of its
14 contributions (alleged violation of RCW 42.17.120).

15 7. On January 31, 2012, the Washington Attorney General's Office received a 45-
16 day citizen action letter under RCW 42.17.400(4) from Joseph Rosmann (hereafter the "citizen
17 action letter" or "letter"). The letter alleged violations of RCW 42.17 by MBF, Ms. Baugh,
18 and Mr. Su ("Respondents").

19 8. The citizen action letter alleged that MBF was a political committee required to
20 register and report under RCW 42.17 before September 27, 2011 (the date identified in PDC
21 Case No. 12-144 as the date MBF became a political committee). The letter alleged that:

- 22 a. Tim Ceis, a political consultant, allegedly consulted with or worked for
23 MBF prior to September 27, 2011 concerning its political committee
24 activities;
25 b. MBF board member Matt Terry allegedly sent an email soliciting
26 contributions for MBF's activities in March 2011; and,

1 c. MBF allegedly solicited contributions for its activities, and coordinated its
2 support of candidates for Bellevue City Council with those candidates,
prior to September 27, 2011.

3 9. The letter alleged that Ms. Baugh concealed the source of MBF's contributions
4 which would be prohibited under RCW 42.17.120.

5 10. The letter alleged that Mr. Su concealed the source of MBF's contributions
6 which would be prohibited under RCW 42.17.120.

7 11. By letter dated February 9, 2012, the Attorney General's Office referred the
8 citizen action letter to the PDC for review and possible action.

9 12. PDC staff reviewed the citizen action letter and determined that it appeared to
10 contain largely the same allegations as those in PDC Case No. 12-144. The letter did not
11 include any material documentary evidence to substantially distinguish Mr. Rosmann's
12 allegations from those addressed in PDC Case No. 12-144.

13 13. PDC staff contacted Mr. Rosmann and asked if he had any additional new or
14 factual information to support his allegations. PDC staff did not receive a response.

15 14. PDC staff concluded the letter made the same allegations as in PDC Case No.
16 12-144, with the exception of three new allegations as described in paragraphs 8 - 10. PDC
17 staff investigated those new allegations.

18 15. Regarding the first new allegation (that prior to September 27, 2011 MBF was a
19 political committee required to register and report under RCW 42.17.040, 42.17.080, and
20 42.17.090), the PDC staff investigation showed:

21 a. Mr. Ceis was invited to attend an MBF meeting on January 25, 2011, but
22 he was not paid for consulting services, and did not attend future meetings.
23 No evidence was found that his comments, or MBF's local lobbying
efforts, made MBF a political committee earlier than September 27, 2011.

24 b. On March 1, 2011, Mr. Terry sent a personal email to friends and
25 associates describing MBF as a newly formed grassroots coalition
26 comprised of local community leaders with a long-term progressive vision
for the City of Bellevue. The e-mail did not support or oppose candidates

1 or ballot propositions, did not solicit donations, dues or contributions, and
2 did not state that MBF would use funds it received from those joining the
3 organization to support or oppose candidates or ballot propositions. No
4 evidence was found that other MBF members or volunteers assisted Mr.
Terry in drafting his March 1, 2011 email. MBF began receiving
donations when it formally organized in February 2011.

5 c. MBF, through Ms. Baugh, sent four emails to its members in August
6 2011. No evidence was found that the emails solicited contributions to
7 support or oppose candidates or ballot propositions, or that MBF became a
political committee earlier than September 27, 2011.

8 d. MBF board meeting minutes of 2011 showed that from January through
9 May, MBF discussed its organization, various local issues including the
10 east link for light rail, Sound Transit activities, Bellevue City Council
11 meetings, other light rail issues, Seattle tunnel funding, and related
12 transportation issues. Starting in June, the board began discussing the
13 candidates for Bellevue City Council and possible ways that MBF could
14 consider becoming involved in the election. The board encouraged its
15 members to support three named candidates and to become involved in
those campaigns. At the September 27, 2011 board meeting, MBF agreed
to fund a mailer supporting three candidates for Bellevue City Council and
opposing one ballot proposition. No evidence was found that MBF was
engaged in activities that would require registration and reporting as a
political committee earlier than September 27, 2011.

16 16. Regarding the second new allegation (that Ms. Baugh violated RCW
17 42.17.120), the PDC staff investigation showed:

- 18 a. No evidence that she concealed MBF's political committee contributions
19 or expenditures reportable under RCW 42.17.
20 b. It was the responsibility of MBF (not Ms. Baugh) to report the identity of
its contributors, which it did.

21 17. Regarding the third new allegation (that Mr. Su violated RCW 42.17.120), the
22 PDC staff investigation showed:

- 23 a. Mr. Su contributed \$5,000 to MBF to help pay for its independent
expenditure in October 2011.
24 b. No evidence was found that Mr. Su was solicited or made a contribution to
25 MBF before September 27, 2011, the date MBF decided to make an
26 independent expenditure to support three candidates and oppose one ballot
proposition.

- 1 c. No evidence was found that Mr. Su concealed the \$5,000 contribution he
2 made to MBF on October 14, 2011. Mr. Su identified himself to MBF as
3 the contributor, and it was the responsibility of MBF (not Mr. Su) to report
Mr. Su as the contributor, which it did.

4 **Conclusions of Law**

5 *Political Committee*

6 18. RCW 42.17.020(39) defined a “political committee” as “any person (except a
7 candidate or an individual dealing with his or her own funds or property) having the
8 expectation of receiving contributions or making expenditures in support of, or opposition to,
9 any candidate or any ballot proposition.”

10 19. RCW 42.17.040 required every political committee to timely register with the
11 Commission.

12 20. RCW 42.17.080 and 42.17.090 required political committees to file timely,
13 accurate reports of contributions, including contributions pledged but not received, and
14 expenditures, including orders placed, debts, and obligations.

15 21. A person is a political committee if that person becomes a “receiver of
16 contributions” to support or oppose candidates or ballot propositions, or if expenditures to
17 support or oppose candidates or ballot propositions become one of the person’s primary
18 purposes. *State v. Dan Evans Committee*, 86 Wn.2d 503, 546 P.2d 75 (1976); and, *Evergreen*
19 *Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586 (2002), *rev.*
20 *denied* 148 Wn.2d 120 (2003); AGO 1973 No. 14.

21 22. MBF was not a political committee as defined at RCW 42.17.020(39) prior to
22 September 27, 2011. MBF did not have the expectation of receiving contributions or making
23 expenditures in support of, or opposition to, any candidate or any ballot proposition prior to
24 September 27, 2011.

25 23. First, under the “contributions” test (of what qualifies as a political committee),
26 no evidence showed MBF received campaign contributions to support or oppose candidates or

1 ballot measures prior to September 27, 2011. Therefore, MBF did not become a political
2 committee under this test earlier than September 27, 2011.

3 24. Second, under the "expenditures" test (of what qualifies as a political
4 committee), no evidence showed that MBF made expenditures that supported or opposed a
5 candidate or ballot proposition prior to September 27, 2011. Accordingly, conducting the next
6 step of that test, the "primary purpose" analysis, prior to September 27, 2011, is not necessary.
7 Therefore, MBF did not become a political committee under this test earlier than September
8 27, 2011.

9 25. Because MBF was not a political committee prior to September 27, 2011, it was
10 not required to report under RCW 42.17.040, RCW 42.17.080 or RCW 42.17.090 prior to
11 September 27, 2011.

12 *Concealment*

13 26. RCW 42.17.120 stated that no contribution shall be made and no expenditure
14 shall be incurred, directly or indirectly, in a fictitious name, anonymously, by one person
15 through an agent, relative, or other person, in such a manner as to conceal the identity of the
16 source of the contribution or in any other manner so as to effect concealment.

17 27. Ms. Baugh did not violate RCW 42.17.120 because she did not conceal the
18 source of MBF's political committee contributions reportable under RCW 42.17, as alleged in
19 the citizen action letter.

20 28. Mr. Su did not violate RCW 42.17.120 because he did not conceal the source of
21 MBF's political committee contributions reportable under RCW 42.17, as alleged in the citizen
22 action letter.

23 29. Under RCW 42.17, it was the responsibility of MBF (not Ms. Baugh and Mr.
24 Su) to report the identity of its contributors, which it did.

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[illegible]

II. ORDER OF DISMISSAL

By unanimous vote, the Commission dismisses each of the allegations against the Respondents in the citizen action letter.

The Executive Director is authorized to enter this order on behalf of the Commission.

WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION

Andrea M. Doyle

Attachment: Appeals and Enforcement of Final Orders

Move Bellevue Forward
Attn: Scott Rodgers
227 Bellevue Way N.E., PMB 328
Bellevue, WA 98004

John Su
Su Development
1100 106th Ave. N.E., Suite 101
Bellevue, WA 98004-4313

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2 I, James Greer, certify that I mailed a copy of this order to the
3 Respondents at their respective addresses, postage prepaid, on the date stated herein.

4 Signature [Signature]

Date 5/14/12

INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

APPEALS

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. *RCW 34.05.010(19)*. The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.